

§ 201.122

§ 201.122 Application for subpoena duces tecum.

An application for a subpoena duces tecum for documentary or tangible evidence shall be in duplicate except that for good cause shown it may be made during the course of a hearing on the record to the presiding officer. Such application need not be served upon all parties. All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought and shall be accompanied by an original and two copies of the subpoena sought which shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible.

§ 201.123 Standards for issuance of subpoena duces tecum.

The officer considering any application for a subpoena duces tecum shall issue the subpoena requested if he is satisfied the application complies with this section and the request is not unreasonable, oppressive, excessive in scope or unduly burdensome. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpoena duces tecum and no detailed or burdensome showing shall be required as a condition to the issuance of any subpoena.

§ 201.124 Service and quashing of subpoenas.

Subpoenas issued under this section may be served upon the person to whom directed in accordance with subpart D of this part. Any person upon whom a subpoena is served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpoena with the officer who issued the subpoena for action by him, and serve a copy of such motion to quash upon the party requesting the subpoena. If the person to whom the motion to modify or quash the subpoena has been addressed or directed has not acted upon such a motion by the return date, such date shall be stayed pending his final action thereon. The Administration may at any time review, upon its own initia-

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tive, the ruling of the officer denying a motion to quash a subpoena. In such cases, the Administration may at any time order that the return date of a subpoena which it has elected to review be stayed pending Administration action thereon.

§ 201.125 Attendance and mileage fees.

Persons attending hearings under requirement of subpoenas are entitled to the same fees and mileage as in the courts of the United States, to be paid by the party at whose instance the persons are called.

§ 201.126 Service of subpoenas.

If service of subpoena is made by a United States marshal or his deputy, such service shall be evidenced by his return thereon. If made by any other person, such person shall make affidavit thereto, describing the manner in which service is made, and return such affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service the original subpoena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be left with him. The original subpoena, bearing or accompanied by required return, affidavit, or statement, shall be returned without delay to the Administration, or if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

§ 201.127 Subpoena of Administration employees, documents, or things.

No subpoena for the attendance of an Administration officer or employee, or for the production of Administration documents or things shall be complied with except upon written authorization of the General Counsel upon written application by the party requesting the subpoena.

Subpart M—Hearing Procedures (Rule 13)

§ 201.131 Presentation of evidence.

(a) *Testimony.* Where appropriate, the Presiding officer may direct that the testimony of witnesses be prepared in

written exhibit form and shall be served at designated dates in advance of the hearing. Evidence as to events occurring after the exhibit-exchange dates shall be presented by a revision of exhibits. Witnesses sponsoring exhibits shall be made available for cross-examination. However, unless authorized by the presiding officer, witnesses will not be permitted to read prepared testimony into the record. The evidentiary record shall be limited to factual and expert opinion testimony. Argument will not be received in evidence but rather should be presented in opening and/or closing statements of counsel and in briefs to the presiding officer subsequently filed.

(b) *Exhibits.* All exhibits and responses to requests for evidence shall be numbered consecutively by the party submitting same and appropriately indexed as to number and title and shall be exchanged on dates prior to the hearing prescribed in the pre-hearing rulings. Written testimony should be identified alphabetically. Two copies shall be sent to each party and two to the presiding officer. No response to a request for evidence will be received into the record unless offered and received as an exhibit at the hearing. The exhibits, other than the written testimony, shall include appropriate footnotes or narrative material explaining the source of the information used and the methods employed in statistical compilations and estimates and shall contain a short commentary explaining the conclusions which the offeror draws from the data. Rebuttal exhibits should refer specifically to the exhibits being rebutted. Where one part of a multipage exhibit is based upon another part, appropriate cross-reference should be made. The principal title of each exhibit should state precisely what it contains and may also contain a statement of the purpose for which the exhibit is offered. However, such explanatory statement, if phrased in an argumentative fashion, will not be considered as a part of the evidentiary record. Additional exhibits pertinent to the issues may be submitted in a proceeding with the approval of the presiding officer.

(c) *Cooperation on basic data.* Parties having like interests are specifically

encouraged to cooperate with each other in joint presentations particularly in such items as basic passenger, cargo, and scheduling data compiled from official or semiofficial sources, and any other evidence susceptible to joint presentation. Duplicate presentation of the same evidence should be avoided wherever possible.

(d) *Authenticity.* The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

(e) *Statement of position and trial briefs.* A written statement of position should be exchanged by all counsel with copies to all other parties prior to the beginning of the hearing; *Provided, however,* That Public Counsel or counsel for a public body which has intervened as its interests may appear, may offer his statement of position at the conclusion of the evidentiary hearing, unless such is impracticable. This statement should include a showing of the theory of the case of the party submitting the statement and will not be subject to cross-examination. Trial briefs are acceptable but will not be required.

§ 201.132 Conduct of the hearing.

(a) *Order of presentation.* Normally the order of presentation at the hearing will be alphabetical in each of the following categories:

- (1) MarAd statistical material.
- (2) Shipper interests, United States and foreign government departments.
- (3) Applicants.
- (4) Intervenor.
- (5) Public counsel.

Normally, rebuttal should be presented without any adjournment in the proceedings.

(b) *Burden of proof.* The burden of proof shall be (1) upon an applicant for any form of government aid or grant; and (2) upon a proponent for the issuance of any rule or order within the jurisdiction of the Administration. The burden of going forward with rebuttal